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In the Supreme Court of the United States

OCTOBER TERM, 1981

METROPOLITAN LIFE INSURANCE COMPANY, APPELLANT

v.

COMMONWEALTH OF MASSACHUSETTS

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether a state statute that requires insured employee benefit plans to provide specified minimum benefits for certain kinds of medical services is preempted by Section 514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1144(a).*

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* Metropolitan Life Insurance Company and The Travelers Insurance Company were the appellants in the Supreme Judicial Court of Massachusetts. Travelers will also docket an appeal to this Court and will discuss preemption under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* Metropolitan joins in Travelers' arguments concerning the NLRA and incorporates them by reference in this jurisdictional statement.

In accordance with Rule 28.1 of the Rules of this Court, Metropolitan states that, other than wholly-owned subsidiaries, it has only one subsidiary in which it owns a controlling interest of more than 50%. That subsidiary is Dawn Water Company.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts (App. A, 1a-22a)[1] is reported at 385 Mass. 598 and 433 N.E. 2d 1223. The findings and conclusions of the state trial court (App. C, 24a-50a) are not reported. The trial court's opinion on appellee's motion for preliminary injunctive relief (App. F, 59a-72a) is not reported.

JURISDICTION

The judgment of the Supreme Judicial Court of Massachusetts (App. B) was entered on March 24, 1982. A notice of appeal to this Court (App. I) was filed on June

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[1] "App." refers to the separately bound appendix filed jointly in this Court by appellant and The Travelers Insurance Company.

2, 1982. On June 4, 1982, Justice Brennan extended the time for docketing the appeal to and including August 21, 1982 (App. G). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

STATUTORY PROVISIONS INVOLVED

Section 47B of Massachusetts General Laws Chapter 175 and the relevant provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, are reprinted in App. H.

STATEMENT

In 1974, after extended study, Congress enacted the Employee Retirement Income Security Act ("ERISA") to protect the interests of participants in employee benefit plans and to enable such plans to be administered on a uniform, nationwide basis. To achieve these goals, Congress sought to occupy the regulatory field fully and thereby to eliminate the problems caused by diverse, patchwork state legislation. In Section 514(a) of ERISA, 29 U.S.C. 1144(a), Congress explicitly preempted all state laws that regulate, directly or indirectly, employee benefit plans covered by the federal statute. In unmistakable terms, Section 514(a) provides that the federal law "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan * * *."

In 1973, shortly before the enactment of ERISA, the Massachusetts legislature passed the "mandated benefit" statute at issue in this case. The state law, Section 47B of Massachusetts General Laws Chapter 175, requires employee health and welfare plans and insurance policies sold to such plans (as well as other health insurance policies) to provide certain specified minimum benefits

for the care of mental and nervous conditions.[2] Section 47B became effective on a mandatory basis on January 1, 1976.

Massachusetts has not sought to enforce Section 47B to the extent it applies directly to employee benefit plans. The Commonwealth concedes that ERISA precludes state legislatures from directly prescribing the nature and level of benefits that must be provided by plans covered by the federal law (App. C, 31a, 47a). But, the Commonwealth maintains, health insurance policies purchased by such plans must abide by the requirements of Section 47B and provide the specified coverage for mental and nervous conditions to plan beneficiaries residing in Massachusetts. Accordingly, in the Commonwealth's view, all insured employee health and welfare plans must offer the particular benefits mandated by the state legislature, even though ERISA bars the legislature from imposing that requirement directly on the plans themselves.

Appellant Metropolitan Life Insurance Company has issued numerous health insurance policies to employee benefit plans. Among other ERISA plans covered by Metropolitan policies is General Electric Company's em-

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[2] In particular, Section 47B requires that employee benefit plans and health insurance policies satisfy the following minimum requirements (App. H, 77a):

> "(a) In the case of benefits based upon confinement as an inpatient in a mental hospital under the direction and supervision of the department of mental health, or in a private mental hospital licensed by the department of mental health, the period of confinement for which benefits shall be payable shall be at least sixty days in any calendar year.
>
> (b) In the case of benefits based upon confinement as an inpatient in a licensed or accredited general hospital, such benefits shall be no different than for any other illness.
>
> (c) In the case of outpatient benefits, these shall cover, to the extent of five hundred dollars over a twelve-month period, services furnished [by persons or institutions having certain specified qualifications]."

ployee health insurance plan, which provides coverage to approximately one million persons nationwide. General Electric has, for many years, observed a uniform benefits policy for all plan members.

Appellant believes that, under ERISA and the Supremacy Clause in Article VI of the federal Constitution, the mandatory feature of Section 47B cannot properly be applied to employee benefit plans or to the health insurance policies they purchase. For this reason (among others), appellant did not modify certain of its employee benefit plan policies to include the minimum coverage required by Section 47B, and it continued to pay benefits under those policies in accordance with the existing policy terms.

On June 1, 1979, the Commonwealth filed this action for declaratory and injunctive relief in the Superior Court for Suffolk County, Massachusetts. The Commonwealth sought (i) a declaration that Section 47B can validly be applied to insured ERISA plans and (ii) an injunction directing appellant Metropolitan and The Travelers Insurance Company to comply with the state statute. On the Commonwealth's motion, the trial court directed both defendants, pending the outcome of this litigation, to provide the mental health benefits mandated by Section 47B to Massachusetts residents among the beneficiaries of employee plans for which the defendants issued or renewed insurance policies after January 1, 1976 (App. F, 59a-72a).

At trial, appellant demonstrated without dispute that, as applied to insured employee benefit plans, state mandated benefit statutes, such as Section 47B,

(i) destroy the uniformity of ERISA plans that cover employees in different states;

(ii) significantly increase the costs of plan administration; and

(iii) force beneficiaries to choose among (a) paying higher premiums to defray the additional

> cost of the new, mandated benefit; or (b) sacrificing other benefits that are already covered by the plan and that may well be more desirable than the mandated benefit; or (c) forgoing insurance altogether.

Appellant observed that mandated benefit statutes improperly tend to encourage employee benefit plans to become self-insurers. State statutes like Section 47B, when applied only to insured plans, ascribe significance to a distinction not drawn by Congress, *i.e.*, the distinction between insured and non-insured plans; they penalize insurance and thus threaten the financial security of ERISA plans.

Notwithstanding these arguments, the Superior Court sustained the validity of Section 47B and granted the injunction sought by the Commonwealth (App. C, 24a-50a). The court stated merely that Section 47B "is not preempted by * * * ERISA" (*id.* at 45a).

On direct appeal, the Supreme Judicial Court of Massachusetts affirmed (App. A, 1a-22a). The court noted that, in addition to the broad preemption provision in Section 514(a), ERISA also contains a "savings clause" for state insurance regulation (*id.* at 6a). Section 514(b)(2)(A) of the Act provides that nothing in the statute "shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. 1144(b)(2)(A).[3] Although the Commonwealth argued that Section 47B "regulates insurance" and therefore is exempt from ERISA preemption, the court was unwilling to adopt this simplistic contention. Indeed, the court stated (App. A, 9a):

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[3] Section 514(b)(2)(B), in turn, qualifies the savings clause. It states:

> Neither an employee benefit plan * * * nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, * * * or to be engaged in the business of insurance * * * for purposes of any law of any State purporting to regulate insurance companies [or] insurance contracts * * *.

> We are wary of such a literal reading, which might permit the State, through its insurance laws, to reach far into areas governed by ERISA, and thereby negate the unmistakable intent of Congress to work a broad preemption.

The court accepted the Commonwealth's argument only to the extent of acknowledging that "the language of the savings clause is broad enough to *permit* a construction that would exempt § 47B from preemption" (*id.* at 9a-10a; emphasis added).

The Supreme Judicial Court's principal reason for upholding Section 47B was that the state law deals with the "substantive content" of employee benefits plans, not with the conduct of plan administrators. The court explained (*id.* at 10a; citations and footnote omitted):

> Congress, when it enacted ERISA, was concerned with widespread abuses in plan administration, often resulting in employees' losses of anticipated benefits. In response, Congress enacted rules governing disclosure and fiduciary conduct by administrators of welfare benefit plans. Section 47B has no bearing on the problem of administrative abuse, and does not overlap or interfere with the means chosen by Congress to deal with such abuse. Section 47B affects only the substantive content of plans—a subject completely untouched by ERISA's regulatory provisions. Therefore, nothing in the practical relationship between the two statutes calls for an implied limitation on the phrase "regulates insurance" that would exclude § 47B from the protection of the savings clause.

The court thus believed that questions of ERISA preemption ultimately can be determined only by considering the extent of actual practical conflict between federal and state law.

THE QUESTION IS SUBSTANTIAL

This case presents an important question concerning the operation of employee health plans. A large number of states have now enacted statutes that require health insurance policies available to such plans to include, for state residents among the plan's beneficiaries, particular benefits for particular medical conditions.[4] The number of employees and dependents potentially affected by such statutes is enormous. Mandated benefit statutes like Section 47B undercut one of the primary congressional purposes in enacting ERISA—encouraging uniformity of coverage in plans covering employees in several states. The compatibility of ERISA with such laws therefore is an issue that deserves the attention of this Court. Not only has a state court upheld a state statute against a challenge based on federal law, but the ruling of the state court is inconsistent with and threatens to undermine this Court's recent decision in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

Indeed, this Court has recently noted probable jurisdiction in another ERISA preemption case, involving the interaction among *Alessi*, ERISA, Title VII of the Civil Rights Act of 1964, and a state statute mandating disability benefits for pregnancy. See *Kramarsky* v. *Delta Airlines*, No. 81-1578. That case, however, involves gen-

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[4] Many of these statutes concern mental illness. See Cal. Ins. Code § 10125; Colo. Rev. Stat. § 10-8-116(7)-(11); Conn. Gen. Stat. Ann. § 38-174d; Fla. Stat. Ann. § 627.668; Ga. Code Ann. 56-3110; Ill. Ann. Stat. ch. 73, § 982e; Kan. Stat. § 40-2, 105; La. Rev. Stat. Ann. § 22:213.2; Md. Ann. Code art. 48A, § 477E; N.H. Rev. Stat. Ann. 415:18-a; N.Y. Ins. Law 162(16); N.D. Cent. Code § 26-39-01 to 26-39-05; Ore. Rev. Stat. § 743.558; Tenn. Code Ann. § 56-1167; Vt. Stat. Ann. tit. 8, § 4089; Va. Code § 38.1-348.7; W. Va. Code § 33-16-3a; Wis. Stat. Ann. § 632.89.

Others involve different kinds of benefits. See, *e.g.*, Mich. Comp. Laws 500.3609; Wis. Stat. Ann. § 632.89; N.H. Rev. Stat. 415:18-a III (a); Maine Rev. Stat. 24-A § 2837; Conn. Gen. Stat. Ann. § 38-174k.

der discrimination and Title VII issues not present here. It does not concern the scope of ERISA's savings clause for state laws that purport to regulate insurance. By granting plenary review in this case, the Court can resolve the most common and critical question regarding the relationship between ERISA and state mandated benefit statutes, and the Court can do so in a context in which that issue is squarely and clearly presented.

1. The Decision Below Is Inconsistent with *Alessi* and Permits States to Do Indirectly What They May Not Do Directly.

Since the enactment of ERISA, most judicial authority has applied the statute's broad preemption provision in accordance with the congressional intent to occupy fully the regulatory field. The leading case is *Alessi* v. *Raybestos-Manhattan, Inc.*, *supra*. See also, *e.g.*, *Azzaro* v. *Harnett*, 414 F. Supp. 473 (S.D.N.Y. 1976), aff'd, 553 F.2d 93 (2d Cir.), cert. denied, 434 U.S. 824 (1977); *Hewlett-Packard Co.* v. *Barnes*, 425 F. Supp. 1294 (N.D. Calif. 1977), aff'd, 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978); *National Carriers' Conference Committee* v. *Heffernan*, 454 F. Supp. 914, 917 (D. Conn. 1978). The Court in *Alessi* held that ERISA's Section 514(a) is broad enough to preempt even state laws that do not directly regulate employee pension or welfare plans. In invalidating a New Jersey workers' compensation law, the Court said that "even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern" (451 U.S. at 525).[8]

The decision below represents a significant departure from *Alessi* and other federal cases applying ERISA's preemption provision. As a practical matter, the state court has held that Section 514(a) of ERISA should be construed narrowly, to preempt state regulation only in those instances when a state law actually conflicts or

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[8] The New Jersey statute at issue in *Alessi* prohibited the setoff of workers' compensation payments against employees' retirement pension benefits payable under ERISA plans.

interferes with federal law. In its understandable desire to avoid the simplistic and erroneous conclusion that any state law related to insurance is automatically excepted from ERISA preemption, the court has effectively ruled that the scope of preemption under Section 514(a) is bounded by the specific substantive provisions of federal law. That view, however, is contrary to the controlling precedents.

As this Court said in *Alessi* (451 U.S. at 523), Congress "meant to establish [employee benefit] plan regulation as exclusively a federal concern." Congress thus sought to make clear that, whether or not a particular federal statutory provision deals with the specific subject addressed by a state law, federal legislation has fully occupied the field and has left no room for supplementary state regulation. As Judge Newman has written,

> Congress made a clear-cut decision not to identify various subjects on which state laws were to be preempted, but instead sought to avoid constant litigation over the scope of preemption by preempting, with certain specific exceptions, "all" state laws insofar as they "relate" to plans covered by ERISA. * * *
>
> * * * § 514(a) preempts all state laws that relate to covered plans, whether the relation arises because a state law is specifically designed to affect such plans or because, as in this case, a state law of general application includes covered plans within its sweep.

Pervel Industries, Inc. v. *Connecticut Commission on Human Rights and Opportunities*, 486 F. Supp. 490, 492 (D. Conn. 1978), aff'd, 603 F.2d 214 (2d Cir. 1979), cert. denied, 444 U.S. 1031 (1980). See also *Hewlett-Packard Co.* v. *Barnes*, *supra*, 425 F. Supp. at 1299-1300.[6]

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[6] Extended to its logical conclusion, the rationale of the Supreme Judicial Court would lead to the view that even *direct* application of Section 47B to employee plans is permissible. For if preemption occurs only where there is an actual clash between federal and state law, and if Congress has not sought to regulate the substantive

In support of its narrower view of ERISA preemption, the Supreme Judicial Court relied entirely (App. A, 10a) on one decision from an intermediate state appellate court. See *Gast* v. *State*, 36 Or. App. 441, 585 P.2d 12 (Or. Ct. App. 1978). That decision simply declared, without authority, that Congress did not intend "to preempt areas of state regulation which are not addressed by ERISA" (585 P.2d at 23). This Court in *Alessi* explicitly declined to express any view on the correctness of *Gast* (451 U.S. at 525 n.21).

If the position adopted below were to prevail, and state insurance laws were permitted to dictate the content of insured ERISA plans as long as those laws did not conflict with ERISA's substantive regulations, the significance of ERISA's preemption provision would be drastically reduced, and the congressional intent underlying Section 514(a) would be defeated. By purporting to "regulate insurance," states would be permitted to accomplish what they cannot accomplish through direct regulation of employee benefit plans. For example, with respect to insured plans, the Commonwealth's argument here means that the result reached in *Alessi* could actually be reversed through action by a state legislature. A New Jersey law could require that any insurance policy covering an employer's workers' compensation obligations contain a provision forbidding the offset of benefits payable under that policy against benefits due to an employee under a retirement or pension plan. Under the reasoning of the Supreme Judicial Court, such a state law would not be preempted by ERISA, even though it would accomplish precisely the same result found unacceptable by this Court in *Alessi*.

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content of ERISA plans, then, according to the court below, there should be no bar to direct state prescription of the benefits to be paid by such plans. Even the Commonwealth concedes, however, that such a result runs counter to the clear language and intent of Section 514 (see App. C, 31a, 47a).

Because Massachusetts cannot directly compel ERISA plans to provide specific health benefits—a point the Commonwealth concedes—it should not be permitted to achieve that result indirectly. As this Court wrote in *Alessi* (451 U.S. at 525), "ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the pre-emption provision."

2. Several Important Practical Considerations Militate Against the Result Reached Below.

a. Congress sought to encourage uniformity in multi-state plans.

The legislative history of ERISA confirms that Congress chose the broad preemption approach to foster uniformity and stability of employee benefit plans and to eliminate the threat of conflicting and inconsistent state regulation. For example, during floor debate in the House, Representative Dent, Chairman of the Subcommittee on Labor of the House Committee on Education and Labor, stated:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.

120 Cong. Rec. 29197 (1974). Similar remarks were made during the Senate floor debate on ERISA. 120 Cong. Rec. 29933 (1974).

If state statutes like Section 47B can compel the inclusion of particular benefits in insurance policies sold to ERISA plans, nationwide plans seeking uniformity will have only two alternatives: either give up insurance altogether or adopt a single national policy that, at vastly increased expense, provides for all employees the most generous of each of the mandated benefits required by

one or more states (assuming, of course, that no such minimum requirements conflict with each other). One law review article has described this dilemma very well:

> If states are permitted to require employee benefit plans to provide substantive benefits under the guise of insurance regulation, the result may be a Hobson's choice for employer or labor and management negotiators: either abandon the funding of benefit plans through insurance policies or be willing to accept all-encompassing uniform national contracts. For if each state may impose its own substantive terms on the plan, the only way uniformity may be reached is by incorporating into the plan all of the benefits each state requires. This dilemma is clearly of the type that Congress sought to avoid by enacting ERISA's preemption provisions, which were formulated to relieve interstate employee benefit plans of the adverse effects of cumulative or inconsistent state regulation.

Hutchinson and Ifshin, *Federal Preemption of State Law Under the Employment Retirement Income Security Act of 1974*, 46 U. Chi. L. Rev. 23, 68-69 (1978). As these commentators observe, a Congress trying to encourage uniformity could hardly have intended that the only means of accomplishing that end would be either self-insurance or comprehensive compliance with all the various and shifting positions of state legislatures that choose to enact mandated benefit laws.

If a multistate plan does not adopt one of the foregoing alternatives, Section 47B and other mandated benefit statutes will produce disparate treatment of employees covered by the same health plan, depending on the state in which they reside. For example, an employer's insured health plan, covering employees at a single plant, some living in Massachusetts and some living in Rhode Island, would be required to provide minimum coverage for the treatment of the mental and nervous conditions of the Massachusetts residents, but no such requirement would apply to the Rhode Island residents. For this reason, and

contrary to ERISA's intent, mandated benefit statutes entail substantial administrative costs and produce unequal benefits for similarly situated employees of the same employer. These problems are particularly acute for employers with many employees whose jobs require them to move frequently from one state to another.

b. ***By providing an incentive for self-insurance, the decision below threatens to diminish the financial security of employee benefit plans.***

ERISA itself draws no distinction between insured and noninsured plans. On the contrary, Section 3(1) of the Act, 29 U.S.C. 1002(1), explicitly includes within the definition of "employee welfare benefit plan" plans that provide benefits "through the purchase of insurance or otherwise." Under the rationale followed in the courts below, however, states may mandate the benefits provided by insured plans but may not mandate the benefits provided by noninsured plans.

By imposing additional burdens on insured plans only, mandated benefit statutes provide an incentive for plans to eschew the purchase of insurance policies and to establish their own funds for the payment of employee claims. The more onerous the benefits mandated by state laws, the greater the incentive for employee health plans to forgo insurance. This will skew the financial support of employee benefit plans in a way never intended by Congress, and it will increase the possibility that individual plans will not have sufficient funds available to fulfill their obligations to sick or injured employees. Moreover, the incentive toward self-insurance tends irrationally to favor large employee plans over small. Large plans are the ones more likely to have the funds necessary to take advantage of the self-insurance option, while smaller plans will be forced to purchase insurance and thus to provide mandated benefits.

Nothing whatsoever in the language or legislative history of ERISA suggests that Congress intended to make

the states' power to regulate the substantive content of employee benefit plans turn on the size of the plan, the wealth of the plan, or the plan's willingness to be a self-insurer. These factors bear no rational relationship to the legislative concerns underlying ERISA. The distinction produced by the Commonwealth's application of Section 47B and approved by the decision below therefore is inappropriate.

c. Mandated benefit statutes inevitably will force plan beneficiaries to pay higher premiums or to surrender other desirable benefits.

When a state compels an insured employee benefit plan to provide certain benefits, the state does not offer to pay any of the cost of those benefits. Rather, the expense must be borne by those whom the mandated benefit statute is purportedly designed to help. Plan beneficiaries can pay for such new benefits in one of two ways. They can agree to increased premiums, or they can sacrifice one or more of the benefits already included in the plan in order to compensate for the mandated benefit. In either event, the state legislature will have improperly imposed its will on the plan and its members. In either event, employees' reasonable expectations regarding the costs and benefits associated with the plan will have been disappointed. ERISA's preemption provision was designed to eliminate precisely this kind of state regulation of employee benefit plans.

Wadsworth v. *Whaland*, 562 F.2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978), on which both courts below relied, failed adequately to deal with any of the foregoing arguments and instead relied wholly on the savings clause in Section 514(b)(2)(A). This wooden approach to statutory interpretation places far too much weight on the formal distinctions between direct and indirect regulation and between self-insured and insured plans. The Supreme Court in *Alessi* has since dis-

credited these distinctions for ERISA preemption purposes. Moreover, the insurance savings clause was never intended to refer to state laws that prescribe the substantive content of insurance policies. There is no evidence that Congress even knew about such statutes when it enacted Section 514(b)(2)(A). See *Standard Oil Co.* v. *Agsalud*, 633 F.2d 760, 764-765 (9th Cir. 1980), aff'd, 102 S. Ct. 79 (1981). Rather, Congress sought to preserve state prerogatives in the traditional areas of insurance regulation, such as financial reliability, the maintenance of adequate reserves, investment practices, sales and advertising, agents' licensing, unfair claim practices, and the like. *Wadsworth* was incorrect when it was decided, and its flaws are particularly apparent now, in the wake of *Alessi*.

This Court should intervene in this case to establish the correct relationship between ERISA and state mandated benefit laws and to forestall future adverse effects of such state statutes on employee benefit plans.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

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